

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-07-SE-255
)	
)	Acct. No. 200832100031
Vizio, Inc)	
)	FRN No. 0017646886

ORDER

Adopted: April 9, 2008

Released: April 10, 2008

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and Vizio, Inc. (“Vizio”). The Consent Decree terminates an investigation by the Bureau against Vizio for possible violations of section 330(c) of the Communications Act of 1934, as amended (the “Act”),¹ and section 15.120(d)(2) of the Commission’s rules,² regarding the interstate shipment, after March 15, 2006, of digital television receivers that do not comply with the V-Chip technology requirements because they lack the ability to adapt to new rating systems.

2. The Bureau and Vizio have negotiated the terms of the Consent Decree that resolve this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether Vizio possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Communications Act of 1934, as amended,³ and sections 0.111 and 0.311 of the Commission’s Rules,⁴ the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

¹ 47 U.S.C. § 330(c).

² 47 C.F.R. § 15.120(d)(2).

³ 47 U.S.C. § 154(i), 503(b).

⁴ 47 C.F.R. §§ 0.111, 0.311.

7. **IT IS FURTHER ORDERED** that all third-party complaints against Vizio before the Bureau related to the above-captioned-investigation as of the date of this Consent Decree **ARE DISMISSED**.

8. **IT IS FURTHER ORDERED** that Vizio shall make its voluntary contribution to the United States Treasury, as specified in the Consent Decree, by credit card through the Commission's Revenue and Receivables Operations Group at (202) 418-1995, or by mailing a check or similar instrument payable to the order of the Federal Communications Commission, to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).

9. **IT IS FURTHER ORDERED** that Vizio will file reports with the Commission ninety days after the Effective Date, twelve months after the Effective Date, and twenty four months after the Effective Date. Each report shall include a compliance certificate from an officer, as an agent of Vizio, stating that the officer has personal knowledge that Vizio has established operating procedures intended to ensure compliance with this Consent Decree, together with an accompanying statement explaining the basis for the officer's compliance certification. All reports shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

10. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Michael Hurey, Kleinberg & Lerner, LLP, 2049 Century Park East, Suite 1080, Los Angeles, California 90067-3112 and Rob Brinkman, Vice President, Vizio, 39 Tesla, Irvine, CA 92618.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau

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Vizio, Inc.)	
)	FRN No. 0017646886

CONSENT DECREE

The Enforcement Bureau (“Bureau”) and Vizio, Inc. (“Vizio”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether Vizio violated section 330(c) of the Communications Act of 1934, as amended (the “Act”),¹ and section 15.120(d)(2) of the Commission’s rules,² regarding the interstate shipment, after March 15, 2006, of digital television receivers that do not comply with the V-Chip technology requirements because they lack the ability to adapt to new rating systems.

I. DEFINITIONS

1. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (c) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
 - (d) “Complaints” means third-party complaints that may have been received by, or are in the possession of, the Commission or Bureau alleging violations of V-Chip technology requirements.
 - (e) “Compliance Plan” means the program described in this Consent Decree at paragraph 8.
 - (f) “Digital Television Receivers” or “DTV Receivers” means (i) digital television broadcast receivers with display screens in the 4:3 aspect ratio measuring 13 inches or larger diagonally, (ii) digital television broadcast receivers with display screens in the 16:9 aspect ratio measuring 7.8 inches or larger vertically, and (iii) devices with digital television broadcast tuners sold without an accompanying display device, such as DVR recorders.
 - (g) “Effective Date” means the date on which the Bureau releases the Adopting Order.

¹ 47 U.S.C. § 330(c).

² 47 C.F.R. § 15.120(d)(2).

- (h) “Investigation” means the investigation commenced by the Bureau’s August 7, 2007 Letter of Inquiry³ regarding whether Vizio violated section 330(c) of the Act, and section 15.120(d)(2) of the Rules, by shipping interstate television receivers that do not comply with the V-Chip technology requirements because they lack the ability to adapt to new rating systems.⁴
- (i) “Vizio” means Vizio, Inc. and its predecessors-in-interest and successors-in-interest.
- (j) “Order” or “Adopting Order” means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
- (k) “Parties” means Vizio and the Bureau.
- (l) “Rules” means the Commission’s regulations found in Title 47 of the Federal Regulations.

II. BACKGROUND

2. Section 303(x) of the Act directs the Commission to prescribe rules requiring that television receivers shipped in interstate commerce or manufactured in the United States be equipped with a feature designed to enable viewers to block the display of all programs with a common rating.⁵ Section 330(c) of the Act provides that no person shall ship in interstate commerce or manufacture in the United States television receivers that do not comply with rules prescribed by the Commission pursuant to section 303(x).⁶ The Commission adopted program blocking capability requirements for both analog and digital television (“DTV”) receivers in 1998.⁷ In 2004, the Commission adopted specific technical standards to implement V-Chip functionality for DTV receivers (“V-Chip technology requirements”).⁸ The DTV V-Chip technology requirements provide that, effective March 15, 2006, digital television receivers with picture screens 13 inches or greater that are shipped in interstate commerce must be equipped with V-Chip technology to allow blocking of the display of programming based on its content and be able to respond to changes in the content advisory rating system.⁹

3. On August 9, 2007, the Bureau issued a letter of inquiry (LOI) to Vizio.¹⁰ The August 9, 2007 LOI directed Vizio, among other things, to submit a sworn written response to a series of questions

³ See Letter from Kathryn S. Berthot, Chief Spectrum Enforcement Division, Enforcement Bureau to Vizio (“August 7, 2007 LOI”).

⁴ 47 U.S.C. § 330(c); 47 C.F.R. § 15.201(d)(2).

⁵ 47 U.S.C. § 303(x).

⁶ 47 U.S.C. § 330(c).

⁷ *In the Matter of Technical Requirements to Enable Blocking of Video Programming Based on Program Rating, Implementation of Sections 551(c), (d), and (e) of the Telecommunications Act of 1996*, Report and Order, 13 FCC Rcd 11248 (1998).

⁸ *In the Matter of Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, Report and Order, 19 FCC Rcd 18279 (2004). The V-Chip technology requirements also apply to devices sold without an accompanying display device. *Id.* at 18348.

⁹ 47 C.F.R. § 15.120(d)(2).

¹⁰ See August 7, 2007 LOI.

relating to the interstate shipment of television receivers that did not comply with the Commission's requirements that they be able to respond to changes in the content advisory rating system. Vizio initially responded to the August 9, 2007 LOI on September 11, 2007 and provided supplemental responses on November 19, 2007 and January 18, 2008.¹¹

III. TERMS OF AGREEMENT

4. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

5. **Jurisdiction.** Vizio agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

6. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the date on which the Bureau releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Bureau Order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission Order.

7. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate its investigation and dismiss the Complaint. In consideration for the termination of said investigation and dismissal of the Complaint, Vizio agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in this investigation through the Effective Date of the Consent Decree, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Vizio concerning the matters that were the subject of the investigation. The Bureau also agrees that it will not use the facts developed in this investigation through the Effective Date of this Consent Decree, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against Vizio with respect to Vizio's basic qualifications, including its character qualifications, to be a Commission licensee or hold Commission authorizations.

8. **Compliance Plan.** For purposes of settling the matters set forth herein, Vizio agrees to create within 60 days and maintain a Compliance Plan related to future compliance with the Act, the Commission's Rules, and the Commission's Orders. The Plan will include, at a minimum, the following components:

- (a) **Customer Notification.** Vizio will notify all customers who have registered their purchase of VIZIO brand digital television receivers that do not comply with section 15.120(d)(2) that the receivers can be upgraded to respond to changes in the content advisory rating system. Vizio also will post this information on its website.

¹¹ See Letter from Michael Hurey, Kleinberg & Lerner, LLP, to Neal McNeil, Spectrum Enforcement Division, Enforcement Bureau (September 11, 2007); Letter from Michael Hurey, Kleinberg & Lerner, LLP, to Neal McNeil, Spectrum Enforcement Division, Enforcement Bureau (November 19, 2007); and Letter from Michael Hurey, Kleinberg & Lerner, LLP, to Neal McNeil, Spectrum Enforcement Division, Enforcement Bureau (January 18, 2008).

- (b) **Receiver Upgrades.** Vizio will provide on its website an on-line, or downloadable form whereby customers may request a software upgrade that permits V-Chip technology to respond to changes in the content advisory ratings system, and will make such form available for a period of five years. In the alternative, Vizio will make such software upgrades available for download directly from its website, and provide instructions to its customers for the process of downloading the appropriate software and installing it on the receiver. In the event Vizio makes the software available for download and a customer is not able to download the software, Vizio will offer to provide a device (such as a compact disc) at no charge that the customer can use to install the upgrade. For a period of 90 days from the Effective Date, on request from a customer, Vizio will provide an appropriate hardware dongle which permits the software upgrade to be installed on the receiver without charge to the customer. After 90 days from the effective date, on request from a customer Vizio will provide an appropriate hardware dongle which permits the software upgrade to be installed on the receiver at Vizio's cost, plus actual shipping and handling charge. Vizio will make the hardware dongle available for a period of five years.
- (c) **Compliance Officer.** Vizio will appoint its Vice President of Product Development as the Compliance Officer who will oversee the Compliance Plan and enforce the applicable FCC requirements within Vizio.
- (d) **Compliance Measures.** To ensure future compliance, Vizio will implement compliance policies and procedures which will: (1) require specifications for the purchase of products and components to include specific reference to applicable FCC standards; (2) include compliance with FCC requirements in the company's internal and external product design review process; (3) conduct training for key personnel, including its chief operations officer and engineering management at least semi-annually regarding FCC statutes, regulations and rules that relate to the design, manufacture and sale of television receivers; (4) prepare a compliance manual regarding FCC statutes, regulations and rules that relate to the design, manufacture and sale of television receivers to be distributed to the personnel described in (3) above; (5) establish procedures for and conduct periodic product testing with respect to compliance with applicable FCC standards; (4) and identify, segregate, and track to resolution design and product issues specifically affecting the ability of a product to comply with FCC standards.
- (e) **Compliance Reports.** Vizio will file compliance reports with the Commission ninety days after the Effective Date, twelve months after the Effective Date, and twenty-four months after the Effective Date. Each compliance report shall include a compliance certificate from an officer, as an agent of Vizio, stating that the officer has personal knowledge that Vizio has established operating procedures intended to ensure compliance with this Consent Decree, together with an accompanying statement explaining the basis for the officer's compliance certification. All compliance reports shall be submitted to Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.
- (f) **Termination Date.** Unless stated otherwise, the requirements of this Consent Decree will expire twenty-four months after the Effective Date.

9. **Voluntary Contribution.** Vizio agrees that it will make a voluntary contribution to the United States Treasury in the amount of \$370,000. Vizio shall make such contribution in the form of 18 equal payments in the amount of \$20,555.56, paid monthly, commencing with the execution of this Consent Decrees. The payment must be made by check or similar instrument, payable to the Order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced in the caption to the Adopting Order. Payment by check or money order may be

mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code).

10. **Waivers.** Vizio waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order adopting this Consent Decree, provided the Bureau issues an Order adopting the Consent Decree without change, addition, modification, or deletion. Vizio shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Vizio nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Vizio shall waive any statutory right to a trial *de novo*. Vizio hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

11. **Severability.** The Parties agree that if any of the provisions of the Adopting Order or the Consent Decree shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Adopting Order or Consent Decree, but rather the entire Adopting Order or Consent Decree shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly. In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

12. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which Vizio does not expressly consent) that provision will be superseded by such Commission rule or Order.

13. **Successors and Assigns.** Vizio agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

14. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Commission’s Rules and Orders.

15. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

16. **Paragraph Headings.** The headings of the Paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

17. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

18. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

Kris Anne Monteith
Chief
Enforcement Bureau

Rob Brinkman
Vice President
Vizio, Inc.

Date

Date